

SCOTTISH STATUTORY INSTRUMENTS

2022 No. 156

EDUCATION

The Education (Fees) (Scotland) Regulations 2022

<i>Made</i>	- - - -	<i>4th May 2022</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>6th May 2022</i>
<i>Coming into force</i>	- -	<i>1st August 2022</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 1 of the Education (Fees and Awards) Act 1983(1) and all other powers enabling them to do so.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Education (Fees) (Scotland) Regulations 2022 and come into force on 1 August 2022.

(2) These Regulations extend to Scotland only.

Commencement Information

II [Reg. 1](#) in force at 1.8.2022, see [reg. 1\(1\)](#)

Interpretation

2.—(1) In these Regulations—

“Citizens’ Rights Regulations” means the Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020(2),

“Directive 2004/38” means [Directive 2004/38/EC](#) of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States(3), and reference to a provision of this Directive—

(1) 1983 c. 40; section 1 was relevantly amended by the Education Reform Act 1988 (c. 40), schedule 12, paragraph 91, the Further and Higher Education (Scotland) Act 1992 (c. 37), schedule 9, paragraph 8, the Further and Higher Education Act 1992 (c. 13), schedule 8, paragraph 19 and the Education Act 1996 (c. 56), schedule 37, paragraph 57. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

(2) [S.I. 2020/1209](#).

(3) OJ L 158, 30.4.2004, p.77.

Status: Point in time view as at 02/02/2023.

Changes to legislation: The Education (Fees) (Scotland) Regulations 2022 is up to date with all changes known to be in force on or before 01 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (a) is reference to the Directive as it had effect immediately before IP completion day, and
- (b) is to be read, where appropriate, as if references to a “Member State” include the United Kingdom,

“education” includes post-graduate research otherwise than in the course of employment,

“EEA agreement” means the agreement on the European Economic Area signed at Oporto on 2nd May 1992⁽⁴⁾, together with the protocol signed at Brussels on 17 March 1993⁽⁵⁾, as modified or supplemented from time to time, but does not include any retained direct EU legislation,

“EEA EFTA separation agreement” means (as modified from time to time in accordance with any provision of it) the agreement on arrangements between Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland following the withdrawal of the United Kingdom from the European Union, the EEA agreement and other agreements applicable between the United Kingdom and the EEA EFTA states by virtue of the United Kingdom’s membership of the European Union⁽⁶⁾,

“EEA frontier self-employed person” means an EEA national who—

- (a) is a self-employed person in the United Kingdom, and
- (b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar or that EEA state, as the case may be, daily or at least once a week,

“EEA frontier worker” means an EEA national who—

- (a) is a worker in the United Kingdom, and
- (b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar or that EEA state, as the case may be, daily or at least once a week,

“EEA migrant worker” means an EEA national in the United Kingdom who is a worker, but who is not an EEA frontier worker,

“EEA national” means any person who is a national of any EEA state,

“EEA self-employed person” means an EEA national in the United Kingdom who is a self-employed person but who is not an EEA frontier self-employed person,

“EEA state” means—

- (a) any Member State of the European Union, or
- (b) any other state that is party to the EEA agreement,

“employment” means full time or part time employment which, in a normal week, involves a significant number of hours of work and “employed” is to be construed accordingly, and references to employment include references to the holding of any office and to any occupation for monetary gain,

“EU national” means any person who is a national of any Member State of the European Union,

“European Economic Area” means the European Union and, subject to the conditions laid down in the EEA agreement, Iceland, Norway and Liechtenstein,

“family member” means, in relation to any person—

- (a) their spouse or civil partner,
- (b) their direct descendants or those of their spouse or civil partner who are—

⁽⁴⁾ CP 2073 and OJ L 1, 3.1.1994, p.3.

⁽⁵⁾ CP 2183 and OJ L 1, 3.1.1994, p.572.

⁽⁶⁾ CP 217.

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- (i) under the age of 21, or
- (ii) their dependants or those of their spouse or civil partner, or
- (c) their dependant direct relatives in the ascending line or those of their spouse or civil partner,

“fees” includes charges however described,

“parent” includes a step-parent, a guardian, any other person having parental responsibilities for a child and any person having care of a child, and “child” is to be construed accordingly,

“person with protected rights” means—

- (a) a person within the scope of Article 10 (personal scope) of the EU withdrawal agreement, Article 9 (personal scope) of the EEA EFTA separation agreement, or Article 10 (personal scope) of the Swiss citizens’ rights agreement who—
 - (i) has leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules,
 - (ii) is an applicant within the meaning of regulation 4 (applications which have not been finally determined by the deadline) of the Citizens’ Rights Regulations where the relevant period (within the meaning of that regulation) has not ended,
 - (iii) otherwise has rights deemed to apply by virtue of Article 18(1)(d), (2) and (3) (issuance of residence documents) of the EU withdrawal agreement, Article 17(1)(d), (2) and (3) (issuance of residence documents) of the EEA EFTA Separation agreement, or Article 16(1)(d), (2) and (3) (issuance of residence documents) of the Swiss citizens’ rights agreement, or
 - (iv) is an Irish national who, pursuant to section 3ZA (Irish citizens) of the Immigration Act 1971(7), does not require leave to enter or remain in the UK, or
- (b) a family member of a relevant person of Northern Ireland for the purposes of residence scheme immigration rules, where that family member has leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules,

“refugee” means a person within the definition in Article 1 of the Convention relating to the Status of Refugees done at Geneva on 28 July 1951(8), as extended by article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31 January 1967(9), and any reference to the child of a refugee includes a reference to a step-child,

“relevant date” in relation to a course of education commenced by a student means—

- (a) for a course of education starting in the period 1 August to 31 December, 1 August in that year,
- (b) for a course of education starting in the period 1 January to 31 March, 1 January in that year,
- (c) for a course of education starting in the period 1 April to 30 June, 1 April in that year,
- (d) for a course of education starting in the period 1 July to 31 July, 1 July in that year,

“relevant fees” means the aggregate of—

- (a) any fees for admission, registration or matriculation (including matriculation exemption),
- (b) any sessional or tuition fees,
- (c) any composition fee, and
- (d) any graduation fee,

(7) 1971 c. 77.
(8) Cmnd 9171.
(9) Cmnd 3906.

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in each case excluding any element thereof representing or attributable to—

(i) any fees charged by an external body in respect of an examination or validation of a course of education or otherwise charged by such a body whose requirements must (for the purposes of a course) be met, and

(ii) charges for board and lodging,

“relevant person of Northern Ireland” has the meaning given in residence scheme immigration rules,

“residence scheme immigration rules” has the meaning given by section 17(1) (Interpretation: Part 3) of the European Union (Withdrawal Agreement) Act 2020⁽¹⁰⁾,

“Swiss citizens’ rights agreement” means the agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on citizens’ rights following the withdrawal of the United Kingdom from the European Union and the Free movement of persons agreement⁽¹¹⁾,

“Swiss employed person” means a Swiss national in the United Kingdom who is an employed person (within the meaning of Annex 1 to the Switzerland agreement), but who is not a Swiss frontier employed person,

“Swiss frontier employed person” means a Swiss national who—

(a) is an employed person (within the meaning of Annex 1 to the Switzerland agreement) in the United Kingdom, and

(b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar or that EEA state, as the case may be, daily or at least once a week,

“Swiss frontier self-employed person” means a Swiss national who—

(a) is a self-employed person (within the meaning of Annex 1 to the Switzerland agreement) in the United Kingdom, and

(b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar or that EEA state, as the case may be, daily or at least once a week,

“Swiss self-employed person” means a Swiss national in the United Kingdom who is a self-employed person (within the meaning of Annex 1 to the Switzerland agreement), but who is not a Swiss frontier self-employed person,

“Switzerland agreement” means the agreement between the EU and its member States, of the one part, and the Swiss Confederation, of the other, on the Free Movement of Persons signed at Luxembourg on 21 June 1999⁽¹²⁾ and which came into force on 1 June 2002, and reference to a provision of the agreement—

(a) is reference to the agreement as it had effect immediately before IP completion day,

(b) is to be read, where appropriate, as if references to a “Member State” include the United Kingdom,

“worker” means a worker within the meaning of Article 7 (right of residence for more than three months) of Directive 2004/38 or the EEA agreement as the case may be.

(2) For the purposes of these Regulations, and subject to paragraph (3), in assessing whether a student has a relevant connection with Scotland or is an excepted student for the charging of relevant

⁽¹⁰⁾ 2020 c. 1.

⁽¹¹⁾ CP 64.

⁽¹²⁾ Cm 5639.

fees, a course of education is deemed to have started on the date that the first constituent part of any programme which contributes to the final award for that course of education commenced.

(3) In assessing whether a student has a relevant connection with Scotland or is an excepted student for the charging of relevant fees—

- (a) a programme leading to—
 - (i) a degree,
 - (ii) a Higher National Diploma, or
 - (iii) a Higher National Certificate, and
- (b) such other programmes as the Scottish Ministers may determine,

are to be treated as separate and distinct courses of education.

(4) Where a student (“A”)—

- (a) is an excepted student within the meaning of schedule 1 for the purposes of—
 - (i) not being charged higher relevant fees for the first year of A’s current course, or
 - (ii) not being charged higher relevant fees for an earlier year of A’s current course, and
- (b) as at the day before the relevant date for the academic year in respect of which A is seeking to continue to be an excepted student—
 - (i) A’s limited leave to remain granted by virtue of residence scheme immigration rules has expired, and no further leave to remain has been granted,
 - (ii) A has not made an in-time application within the meaning of regulation 4(6) (applications which have not been finally determined by the deadline) of the Citizens’ Rights Regulations, or
 - (iii) A is an applicant for the purposes of regulation 4 of the Citizens’ Rights Regulations, the relevant period (within the meaning of that regulation) has ended in the circumstances described in paragraph (6)(b) or (c) of that regulation, and A is not otherwise an excepted student under schedule 1,

A ceases to be an excepted student immediately before the first day of that academic year.

Commencement Information

I2 [Reg. 2](#) in force at 1.8.2022, see [reg. 1\(1\)](#)

Relevant connection with Scotland

3. For the purposes of regulation 4(1) (charging of higher relevant fees), a student has a relevant connection with Scotland if that student on the relevant date—

- (a) is ordinarily resident in Scotland,
- (b) has been ordinarily resident in the United Kingdom throughout the period of 3 years immediately preceding the relevant date, and
- (c) is—
 - (i) settled in the United Kingdom within the meaning given by section 33(2A) (Interpretation) of the Immigration Act 1971,
 - (ii) under the age of 18 and has lived in the United Kingdom throughout the seven year period preceding the relevant date,
 - (iii) aged 18 or above and, preceding the relevant date, has lived in the United Kingdom throughout either half their life or a period of twenty years,

Status: Point in time view as at 02/02/2023.

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- (iv) aged 18 or above and received support by virtue of sub-paragraph (ii) for the academic year immediately preceding the relevant date, or
- (v) is the spouse, civil partner or child of a person described in sub-paragraphs (i) to (iv).

Commencement Information

I3 [Reg. 3](#) in force at 1.8.2022, see [reg. 1\(1\)](#)

Charging of higher relevant fees

4.—(1) Subject to paragraph (2), it is lawful to charge higher relevant fees in the case of students who do not have a relevant connection with Scotland than in the case of students having such a connection.

(2) It is not lawful to charge higher relevant fees in the case of a student who is an excepted student within the meaning of schedule 1.

Commencement Information

I4 [Reg. 4](#) in force at 1.8.2022, see [reg. 1\(1\)](#)

Ordinary Residence

5. Schedule 2 has effect for determining whether a person is to be treated, for the purposes of regulation 3 (relevant connection with Scotland) or schedule 1 as being, or having been, ordinarily resident in a place at, or for, a particular time.

Commencement Information

I5 [Reg. 5](#) in force at 1.8.2022, see [reg. 1\(1\)](#)

Amendment and revocation

6.—(1) For regulation 3A (application of this part) of the Education (Fees and Awards) (Scotland) Regulations 2007(**13**) substitute—

“This Part does not apply to—

- (a) a student who has a relevant connection with Scotland within the meaning of regulation 3 (relevant connection with Scotland), or
- (b) an excepted student within the meaning of schedule 1,

of the Education (Fees) (Scotland) Regulations 2022.”.

(2) The Education (Fees) (Scotland) Regulations 2011(**14**) are revoked.

Commencement Information

I6 [Reg. 6](#) in force at 1.8.2022, see [reg. 1\(1\)](#)

(13) S.S.I. 2007/152, relevant amending instrument is S.S.I. 2011/389.

(14) S.S.I. 2011/389.

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St Andrew's House,
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SHIRLEY-ANNE SOMERVILLE
A member of the Scottish Government

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SCHEDULE 1

Regulation 4(2)

Fees - Excepted Students

EU nationals etc. with protected rights who have been living in the UK for three years

- 1.—(1) A student is an excepted student if that student is a person with protected rights who —
- (a) is either an EU national or the family member of an EU national,
 - (b) has been ordinarily resident in the United Kingdom throughout the period of 3 years immediately preceding the relevant date, and
 - (c) is ordinarily resident in the United Kingdom on the relevant date.
- (2) For the purposes of this paragraph—
- (a) a person referred to in sub-paragraph 1(a) does not include an EU national who is also a United Kingdom national who has not utilised a right of residence,
 - (b) a United Kingdom national has utilised a right of residence if that person has—
 - (i) exercised a right under Article 7 (right of residence for more than three months) of Directive 2004/38 or any equivalent right under the EEA agreement or the Switzerland agreement in a state other than the United Kingdom, or
 - (ii) resided in a state—
 - (aa) within the territory comprising the European Economic Area and Switzerland other than the United Kingdom, and
 - (bb) of which that person is a national,
 in circumstances in which, had the person not been a national of that state, would have involved the person exercising a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA agreement or the Switzerland agreement,
 - (c) a “family member of an EU national” is to be read as if a relevant person of Northern Ireland were included in the definition of “EU national” in regulation 2(1) (interpretation).

Commencement Information

I7 Sch. 1 para. 1 in force at 1.8.2022, see **reg. 1(1)**

[^{F1}EU nationals etc. with protected rights who have not been living in the UK for 3 years

- 1A.** A student is an excepted student if that student is a person with protected rights who—
- (a) is either an EU national or the family member of an EU national,
 - (b) has not been ordinarily resident in the United Kingdom throughout the period of 3 years immediately preceding the relevant date,
 - (c) is undertaking a course of education at an establishment in Scotland, and
 - (d) is ordinarily resident in the United Kingdom on the relevant date.]

Textual Amendments

F1 Sch. 1 para. 1A inserted (2.2.2023) by The Education (Fees and Student Support) (Miscellaneous Amendment) (Scotland) Regulations 2022 (S.S.I. 2022/362), regs. 1, **2(4)**

Irish nationals who are settled in the United Kingdom

2. A student is an excepted student if that student—
- (a) is an Irish national,
 - (b) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971⁽¹⁵⁾ on the relevant date,
 - (c) is ordinarily resident in Scotland on the relevant date, and
 - (d) has been ordinarily resident in the United Kingdom or Ireland throughout the period of three years immediately preceding the relevant date.

Commencement Information

18 Sch. 1 para. 2 in force at 1.8.2022, see [reg. 1\(1\)](#)

Family members of a relevant person of Northern Ireland

3. A student is an excepted student if that student—
- (a) is a family member of a relevant person of Northern Ireland as defined in paragraph (b) of the definition of “person with protected rights”,
 - (b) is ordinarily resident in Scotland on the relevant date, and
 - (c) has been ordinarily resident in the United Kingdom or Ireland throughout the period of three years immediately preceding the relevant date.

Commencement Information

19 Sch. 1 para. 3 in force at 1.8.2022, see [reg. 1\(1\)](#)

Workers, employed persons, self-employed persons and their family members

4.—(1) A student is an excepted student if that student is a person with protected rights or a qualifying frontier worker who —

- (a) is—
 - (i) an EEA migrant worker or an EEA self-employed person,
 - (ii) a Swiss employed person or a Swiss self-employed person,
 - (iii) a family member of a person mentioned in sub-head (i) or (ii),
 - (iv) an EEA frontier worker or an EEA frontier self-employed person,
 - (v) a Swiss frontier employed person or a Swiss frontier self-employed person, or
 - (vi) a family member of a person mentioned in sub-head (iv) or (v),
- (b) has been ordinarily resident in the United Kingdom, Gibraltar or the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date.

(2) In sub-paragraph (1), a “qualifying frontier worker” means a frontier worker within the meaning of regulation 3 (meaning of frontier worker) of the Citizens’ Rights (Frontier Workers) (EU

⁽¹⁵⁾ 1971 c. 77.

Status: Point in time view as at 02/02/2023.

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Exit) Regulations 2020⁽¹⁶⁾ who has a right of admission to the United Kingdom under regulation 6 (right of admission) of those Regulations.

(3) In this paragraph, any description of a person in sub-paragraphs (1)(a)(i) and (iv) is to be read as if a relevant person of Northern Ireland were included in the definition of “EEA national” in regulation 2, and sub-paragraphs (1)(a)(iii) and (vi) are to be construed accordingly.

Commencement Information

I10 Sch. 1 para. 4 in force at 1.8.2022, see **reg. 1(1)**

Workers who benefitted from the Freedom of Movement for Workers Regulation

5. A student is an excepted student if that student—
- (a) is a person with protected rights who has [^{F2}or had] a right not to be charged higher relevant fees by virtue of Article 10 of Regulation (EU) No. 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union⁽¹⁷⁾, as extended by the EEA agreement,
 - (b) has been ordinarily resident in the United Kingdom, Gibraltar or the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date, and
 - (c) is ordinarily resident in Scotland on the relevant date.

Textual Amendments

F2 Words in sch. 1 para. 5(a) inserted (2.2.2023) by The Education (Fees and Student Support) (Miscellaneous Amendment) (Scotland) Regulations 2022 (S.S.I. 2022/362), regs. 1, **2(5)**

Commencement Information

I11 Sch. 1 para. 5 in force at 1.8.2022, see **reg. 1(1)**

Persons who are settled in the United Kingdom and have exercised a right of residence elsewhere

- 6.—(1) A student is an excepted student if that student—
- (a) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 on the relevant date,
 - (b) was ordinarily resident in Scotland for at least 3 continuous years and settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 immediately before leaving the United Kingdom and who has utilised a right of residence before IP completion day,
 - (c) was ordinarily resident on IP completion day—
 - (i) in Gibraltar or the territory comprising the European Economic Area and Switzerland, or
 - (ii) in the United Kingdom immediately following a period of ordinary residence in Gibraltar or the territory comprising the European Economic Area and Switzerland,

⁽¹⁶⁾ 2020 No. 1213.

⁽¹⁷⁾ OJ L 141, 27.5.2011, p.1.

Status: Point in time view as at 02/02/2023.

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and has remained ordinarily resident in the United Kingdom, Gibraltar or the territory comprising the European Economic Area and Switzerland from IP completion day to the relevant date,

- (d) has been ordinarily resident in the United Kingdom, Gibraltar or the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date, and
 - (e) is undertaking a course for which the relevant date is prior to 31 July 2028.
- (2) For the purposes of this paragraph, a student has utilised a right of residence if that student—
- (a) is—
 - (i) a United Kingdom national,
 - (ii) a family member of a United Kingdom national for the purposes of Article 7 of Directive 2004/38(18) (or corresponding provisions under the EEA agreement or the Switzerland agreement)), or
 - (iii) a person who had a right of permanent residence arising under Directive 2004/38, and
 - (b) either—
 - (i) has exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA agreement or the Switzerland agreement in a State other than the United Kingdom, or
 - (ii) in the case of a student who had a right of permanent residence in the United Kingdom arising under Directive 2004/38, has gone to the state within the territory comprising the European Economic Area and Switzerland of which that student is a national or of which the person in relation to whom that student is a family member is a national.
- (3) Sub-paragraph (1)(a) and the requirement in sub-paragraph (1)(b) to be settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 immediately before leaving the United Kingdom do not apply where the student falls within sub-paragraph (2) (a)(ii) and is accompanying or joining that national in the United Kingdom.

Commencement Information

I12 Sch. 1 para. 6 in force at 1.8.2022, see **reg. 1(1)**

Refugees

7. A student is an excepted student if that student—
- (a) is—
 - (i) a refugee who has been ordinarily resident in the United Kingdom since that person was first recognised as a refugee, or
 - (ii) the spouse, civil partner or child of such a refugee, and
 - (b) is ordinarily resident in Scotland on the relevant date.

(18) OJ No 158, 30.4.2004c, p.77.

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Commencement Information

I13 Sch. 1 para. 7 in force at 1.8.2022, see **reg. 1(1)**

Persons granted leave following on from refugee claim

8. A student is an excepted student if—

(a) that student—

(i) has applied for refugee status but has as a result of that application been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that, although that person is considered not to qualify for recognition as a refugee, it is thought right to allow that person to enter or remain in the United Kingdom and that person has been granted leave to enter or remain accordingly,

(ii) has been ordinarily resident in the United Kingdom since that person was first granted such leave to enter or remain, and

(iii) is ordinarily resident in Scotland on the relevant date, or

(b) that student is the spouse, civil partner or child of a person described in sub paragraph (a) and is ordinarily resident in Scotland on the relevant date.

Commencement Information

I14 Sch. 1 para. 8 in force at 1.8.2022, see **reg. 1(1)**

Iraqi nationals

9. A student is an excepted student if that student—

(a) is an Iraqi national who—

(i) has been granted indefinite leave to enter the United Kingdom under the Locally Engaged Staff Assistance Scheme (Direct Entry) operated by the Home Office,

(ii) has been ordinarily resident in the United Kingdom at all times since that person was first granted such indefinite leave to enter the United Kingdom, and

(iii) is ordinarily resident in Scotland on the relevant date, or

(b) is the spouse, civil partner or child of a person described in sub-paragraph (a) and is ordinarily resident in Scotland on the relevant date.

Commencement Information

I15 Sch. 1 para. 9 in force at 1.8.2022, see **reg. 1(1)**

Syrian nationals

10. A student is an excepted student if that student—

(a) is a Syrian national who—

(i) has been granted humanitarian protection to enter the United Kingdom under the Syrian Vulnerable Persons Relocation Scheme operated by the Home Office,

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- (ii) has been ordinarily resident in the United Kingdom at all times since that person was first granted such humanitarian protection to enter the United Kingdom, and
 - (iii) is ordinarily resident in Scotland on the relevant date, or
- (b) is the spouse, civil partner or child of a person described in sub-paragraph (a) and is ordinarily resident in Scotland on the relevant date.

Commencement Information

I16 Sch. 1 para. 10 in force at 1.8.2022, see **reg. 1(1)**

Afghan nationals

11. A student is an excepted student if that student—

- (a) is an Afghan national who—
 - (i) has been granted limited leave to remain in the United Kingdom under the Locally Employed Staff Ex-Gratia Scheme⁽¹⁹⁾ operated by the Home Office,
 - (ii) has been ordinarily resident in the United Kingdom at all times since that person was first granted such limited leave to remain in the United Kingdom, and
 - (iii) is ordinarily resident in Scotland on the relevant date, or
- (b) is the spouse, civil partner or child of a person described in sub-paragraph (a) and is ordinarily resident in Scotland on the relevant date.

Commencement Information

I17 Sch. 1 para. 11 in force at 1.8.2022, see **reg. 1(1)**

Relocated Afghan citizens

12. A student is an excepted student—

- (a) if that student—
 - (i) has been granted leave under the Afghan Citizens Resettlement Scheme⁽²⁰⁾ or granted leave under the Afghan Relocations and Assistance Policy Scheme⁽²¹⁾,
 - (ii) has been ordinarily resident in the United Kingdom at all times since that person was first granted such leave, and
 - (iii) is ordinarily resident in Scotland on the relevant date, or
- (b) if that student is the spouse, civil partner or child of a person described in sub-paragraph (a) and is ordinarily resident in Scotland on the relevant date.

Commencement Information

I18 Sch. 1 para. 12 in force at 1.8.2022, see **reg. 1(1)**

⁽¹⁹⁾ A copy of the Locally Employed Staff Ex-Gratia Scheme can be viewed at <https://www.gov.uk/government/publications/afghanistan-locally-employed-staff-ex-gratia-scheme?msclkid=eb3bcf90c7b011ec9e31d7ef58015018>.

⁽²⁰⁾ A copy of the Afghan Citizens Resettlement Scheme can be viewed at <https://www.gov.uk/guidance/afghan-citizens-resettlement-scheme?msclkid=e4215a4cc7a311ec8a237e55741dcde6>.

⁽²¹⁾ A copy of the Afghan Relocations and Assistance Policy Scheme can be viewed at <https://www.gov.uk/government/publications/afghan-relocations-and-assistance-policy?msclkid=2a8bc686c7a511ec8a2b8132cb36424d>.

Status: Point in time view as at 02/02/2023.

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Ukrainian nationals

- 13.—(1) A student is an excepted student if that student—
- (a) has—
 - (i) made a relevant application where that application is still being considered, or
 - (ii) been granted leave to enter or remain in the United Kingdom following a relevant application, and
 - (b) is ordinarily resident in Scotland.
- (2) In this paragraph, a ‘relevant application’ is an application to—
- (a) the Ukraine Family Scheme(22),
 - (b) the Ukraine Sponsorship Scheme(23),
 - (c) the Ukraine Extension Scheme(24), or
 - (d) the Home Office for leave outside the immigration rules, as defined in section 33(1) of the Immigration Act 1971(25), where that person—
 - (i) was residing in the Ukraine immediately before 1 January 2022, and
 - (ii) left Ukraine in connection with the Russian invasion which took place on 24 February 2022

by an individual who is eligible to apply to that scheme.

Commencement Information

I19 Sch. 1 para. 13 in force at 1.8.2022, see reg. 1(1)

Persons granted stateless leave

14. A student is an excepted student if that student—
- (a) has—
 - (i) been granted limited leave to remain in the United Kingdom as a stateless person under the immigration rules operated by the Home Office, and
 - (ii) been ordinarily resident in the United Kingdom at all times since that person was first granted such limited leave to remain in the United Kingdom, and
 - (iii) is ordinarily resident in Scotland on the relevant date, or
 - (b) is the spouse, civil partner or child of a person described in sub-paragraph (a) and is ordinarily resident in Scotland on the relevant date.

(22) A scheme operated by the Home Office enabling a Ukrainian national, or the immediate family member of a Ukrainian national resident in Ukraine prior to 1 January 2022, to join family members or to extend their stay in the United Kingdom. The current Home Office guidance in relation to the Ukraine Family Scheme is available here: <https://www.gov.uk/guidance/apply-for-a-visa-under-the-ukraine-sponsorship-scheme?msclid=d2811a9ac7a511ec885bf3a88e71ccca>.

(23) A scheme operated by the Home Office enabling the sponsorship of Ukrainian nationals, or the immediate family member of a Ukrainian national resident in Ukraine prior to 1 January 2022 to come to the United Kingdom. The current Home Office guidance in relation to the Ukraine Sponsorship Scheme (Homes for Ukraine Scheme) is available here: <https://www.gov.uk/guidance/apply-for-a-visa-under-the-ukraine-sponsorship-scheme?msclid=ecaf79fac7a511ecbf7adee0a78bac5b>.

(24) A scheme opening on 3 May 2022 and operated by the Home Office enabling a Ukrainian national who is in the United Kingdom and had permission to stay in the United Kingdom on or before 18 March 2022 to stay in the United Kingdom. The scheme enables the partner or children of the Ukrainian national to apply to stay in the United Kingdom provided they are already in the United Kingdom as the Ukrainian national’s ‘dependants’. The current Home Office guidance in relation to the Ukraine Extension Scheme is available here: <https://www.gov.uk/guidance/support-for-family-members-of-british-nationals-in-ukraine-and-ukrainian-nationals-in-ukraine-and-the-uk?msclid=08bb96fec7a611ecb081f266e6480fd0>.

(25) 1971 c. 77.

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Commencement Information

I20 Sch. 1 para. 14 in force at 1.8.2022, see **reg. 1(1)**

Persons granted discretionary leave to remain as a victim of modern slavery

15.—(1) A student is an excepted student if that student—

- (a) has been granted discretionary leave to remain in the United Kingdom due to being identified as a victim of modern slavery,
- (b) has been ordinarily resident in the United Kingdom at all times since that person was first granted such discretionary leave to remain in the United Kingdom, and
- (c) is ordinarily resident in Scotland on the relevant date.

(2) For the purposes of this paragraph, “modern slavery” includes human trafficking, slavery, servitude and forced or compulsory labour.

Commencement Information

I21 Sch. 1 para. 15 in force at 1.8.2022, see **reg. 1(1)**

Persons granted indefinite leave to remain as a victim of domestic violence or domestic abuse

16. A student is an excepted student if that student—

- (a) has been granted indefinite leave to remain in the United Kingdom under any of the following provisions of the immigration rules⁽²⁶⁾, as defined in section 33(1) of the Immigration Act 1971—
 - (i) paragraph 289B (victims of domestic violence),
 - (ii) paragraph D-DVILR.1.1. of Appendix FM (victims of domestic abuse), or
 - (iii) paragraph 40 of Appendix Armed Forces (Partners of members of HM Forces who are the victim of domestic violence),
- (b) has been ordinarily resident in the United Kingdom since that person was first granted such leave, and
- (c) is ordinarily resident in Scotland on the relevant date.

Commencement Information

I22 Sch. 1 para. 16 in force at 1.8.2022, see **reg. 1(1)**

Persons granted Calais leave

17. A student is an excepted student if that student—

- (a) has extant leave to remain in the United Kingdom under paragraphs 352J, 352K, 352L or 352T (Calais leave and “leave in line” granted by virtue of being a dependent child of a person granted Calais leave) of the immigration rules, as defined in section 33(1) of the Immigration Act 1971,

⁽²⁶⁾ The immigration rules can be viewed at <https://www.gov.uk/guidance/immigration-rules?mselid=b1df136cc7ce11ecb8f75116c530e06c>.

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- (b) has been ordinarily resident in the United Kingdom since that person was first granted such leave, and
- (c) is ordinarily resident in Scotland on the relevant date.

Commencement Information

I23 Sch. 1 para. 17 in force at 1.8.2022, see [reg. 1\(1\)](#)

Persons who are children of asylum seekers and young asylum seekers

18.—(1) A student is an excepted student if that student—

- (a) is the child of an asylum seeker or is a young asylum seeker,
- (b) is resident in Scotland on the relevant date,
- (c) was under 18 years old on the date when the application for asylum was made, which application must have been made prior to 1 December 2006, and
- (d) is under 25 years old on the relevant date.

(2) In this paragraph—

“child of an asylum seeker” means a person who is the child of an asylum seeker as defined in section 18 of the Nationality, Immigration and Asylum Act 2002⁽²⁷⁾, and

“young asylum seeker” means an unaccompanied asylum-seeker who is under the age of 18.

Commencement Information

I24 Sch. 1 para. 18 in force at 1.8.2022, see [reg. 1\(1\)](#)

Children of Swiss nationals

19. A student is an excepted student if that student—

- (a) is the child of a Swiss national,
- (b) is entitled to support in the United Kingdom by virtue of Article 18(2) (related rights) of the Swiss citizens’ rights agreement, and
- (c) has been ordinarily resident in the United Kingdom, Gibraltar, the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date.

Commencement Information

I25 Sch. 1 para. 19 in force at 1.8.2022, see [reg. 1\(1\)](#)

Children of Turkish workers

20.—(1) A student is an excepted student if that student—

- (a) is the child of a Turkish worker (“T”), where T was ordinarily resident in the United Kingdom immediately before IP completion day,

(27) 2002 c. 41.

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- (b) was ordinarily resident in the United Kingdom immediately before IP completion day,
 - (c) is ordinarily resident in Scotland on the relevant date, and
 - (d) has been ordinarily resident in the United Kingdom, Gibraltar or in the territory comprising the European Economic Area, Switzerland and Turkey throughout the period of 3 years preceding the relevant date.
- (2) In this paragraph “Turkish worker” means a Turkish national who—
- (a) is ordinarily resident in Scotland, and
 - (b) is, or has been, lawfully employed in the United Kingdom.

Commencement Information

I26 Sch. 1 para. 20 in force at 1.8.2022, see **reg. 1(1)**

SCHEDULE 2

Regulation 5

Ordinary Residence

Students with a relevant connection with Scotland: ordinary residence on relevant date

1.—(1) For the purposes of regulation 3(a) (relevant connection with Scotland), a student is to be treated as being ordinarily resident in Scotland on the relevant date if that student was not actually so resident only because—

- (a) that student or their spouse or civil partner or either of their parents, or
- (b) in the case of a dependant direct relative in the ascending line, the child upon whom that student was dependent or that child’s spouse or civil partner,

was temporarily employed outside Scotland, or attending a course of study or undertaking postgraduate research outside Scotland.

(2) For the purposes of regulation 3(a) and subject to sub-paragraph (3), a student is not to be treated as being ordinarily resident in Scotland on the relevant date if that student’s residence there on that date is in any sense attributable to, or connected with, any period of residence in Scotland within 3 years immediately preceding the relevant date as respects any part of which its purpose was wholly or mainly that of receiving full-time education.

(3) Sub-paragraph (2) does not apply to a student who has acquired settled status in the United Kingdom under the Immigration Act 1971 as a result of residence for full-time education which has led to a right of permanent residence arising under Directive 2004/38.

Commencement Information

I27 Sch. 2 para. 1 in force at 1.8.2022, see **reg. 1(1)**

Ordinary residence for specified period: general

2. Paragraphs 3 to 5 apply in determining, for the purposes of regulation 3(b) (relevant connection with Scotland) and paragraphs 1(1)(b) (EU nationals etc. with protected rights who have been living in the UK for three years), 2(d) (Irish nationals who are settled in the United Kingdom), 3(c) (family members of a relevant person of Northern Ireland), 4(1)(b) (workers, employed persons,

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self-employed persons and their family members), 5(b) (workers who benefitted from the Freedom of Movement for Workers Regulation), 6(1)(d) (persons who are settled in the United Kingdom and have exercised a right of residence elsewhere), 19(c) (children of Swiss nationals) and 20(1)(d) (children of Turkish workers) of schedule 1, whether a student is to be treated as having been or not having been ordinarily resident for the period specified in that regulation or those paragraphs (in this schedule, “specified period”) in the United Kingdom, Ireland, Gibraltar, the European Economic Area, Switzerland or Turkey (in this schedule, “relevant area”).

Commencement Information

I28 Sch. 2 para. 2 in force at 1.8.2022, see [reg. 1\(1\)](#)

Ordinary residence for specified period: exclusion for educational purposes

3.—(1) A student is not to be treated as having been ordinarily resident in the relevant area for the specified period if that student was resident there for any part of that period wholly or mainly for the purpose of receiving full-time education.

(2) Sub-paragraph (1) does not apply to a student who has acquired settled status in the United Kingdom under the Immigration Act 1971 as a result of residence for full-time education which has led to a right of permanent residence arising under Directive 2004/38, in which case the student must have been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland immediately prior to the start of that period of residence.

(3) A student who is ordinarily resident in Scotland as a result of having moved from a part of the United Kingdom other than Scotland for the purpose of undertaking a course of education is to be considered to be ordinarily resident in the part of the United Kingdom from where they moved.

Commencement Information

I29 Sch. 2 para. 3 in force at 1.8.2022, see [reg. 1\(1\)](#)

Ordinary residence for specified period: residence requirements for students born in the relevant area

4.—(1) A student is to be treated as having been ordinarily resident in the relevant area for the specified period if that student was born and has spent the greater part of their life in the relevant area and—

- (a) one or more parent has been ordinarily resident in the relevant area throughout the specified period and that student is not an independent student, or
- (b) that student has been ordinarily resident in the relevant area for at least one year of the specified period and, in the case of those qualifying by virtue of regulation 3 (relevant connection with Scotland) or paragraph 1 (EU nationals etc. with protected rights) of schedule 1, no part of that residence was wholly or mainly for the purposes of receiving full time education.

(2) In sub paragraph (1)(a), “independent student” means a student who prior to the relevant date—

- (a) is aged 25,
- (b) is married or in a civil partnership,
- (c) has no parent living,

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- (d) had the care of a person under the age of 18 who was wholly or mainly financially dependent upon them, or
 - (e) has been self-supporting out of their earnings for periods aggregating not less than 3 years.
- (3) In sub paragraph 2(e) a student is to be regarded as having been self-supporting out of their earnings for any period during which that student—
- (a) was participating in arrangements for training for the unemployed under any scheme operated, sponsored or funded by any state authority or agency, national, regional or local,
 - (b) was in receipt of benefit payable by any state authority or agency, national, regional or local, in respect of a person who is available for employment but who is unemployed,
 - (c) was available for employment and had complied with any requirement of registration imposed by a body referred to in paragraphs (a) or (b) as a condition of entitlement for participation in arrangements for training or receipt of benefit,
 - (d) received any pension, allowance or other benefit paid by reason of a disability to which that student is subject, or by reason of confinement, injury or sickness, paid by any state authority or agency, national, regional or local, by an employer or any former employer or by any other person, or
 - (e) held an advance postgraduate or other comparable award.

Commencement Information

I30 Sch. 2 para. 4 in force at 1.8.2022, see **reg. 1(1)**

Ordinary residence for specified period: temporary absence for employment or study

5. A student is to be treated as having been ordinarily resident in the relevant area for the specified period if that student was not actually ordinarily resident in the relevant area for the specified period only because—

- (a) that student, or their spouse or civil partner, or either of their parents, or
- (b) in the case of a dependent direct relative in the ascending line, the child upon whom that student was dependent or that child's spouse or civil partner,

was temporarily employed outside the relevant area, or attending a course of study or undertaking postgraduate research outside the relevant area.

Commencement Information

I31 Sch. 2 para. 5 in force at 1.8.2022, see **reg. 1(1)**

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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations consolidate the Education (Fees) (Scotland) Regulations 2011 ([S.S.I. 2011/389](#)) (“the Fees Regulations”) and provide that it is lawful to charge certain students fees at a higher level than other students.

In addition to minor and drafting alterations, these Regulations revoke and replace the Fees Regulations and make amendments to insert new categories of excepted students. These include Afghan citizens who have been granted leave under the Afghan Resettlement Scheme or under the Afghan Relocation and Assistance Policy Scheme (paragraph 12 of schedule 1) and those who have applied to the Ukraine Family Scheme, Ukraine Sponsorship Scheme, the Ukraine Extension Scheme or for leave outside the immigrations rules and have either been granted leave or have an outstanding application to that scheme (paragraph 13 of schedule 1.)

Schedule 1 makes provision for categories of excepted students. It is not lawful to charge higher relevant fees in the case of students listed in this schedule. Schedule 2 determines whether a person is to be treated as being, or having been, ordinarily resident in a place at, or for, a particular time.

Status:

Point in time view as at 02/02/2023.

Changes to legislation:

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